



## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2021-USCBP-2021-0036]

### **Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection-018 Customs Trade Partnership Against Terrorism System of Records**

**AGENCY:** U.S. Customs and Border Protection, U.S. Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of a newly updated and reissued system of records titled, “DHS/U.S. Customs and Border Protection-018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Debra Danisek, [Privacy.CBP@cbp.dhs.gov](mailto:Privacy.CBP@cbp.dhs.gov), (202) 344-1610, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229. For privacy issues please contact: Lynn Parker Dupree, (202) 343-1717, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The U.S. Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the Federal Register, 86 Fed. Reg. 15136 (March 22, 2021), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. In concert with that rulemaking, DHS/CBP issued an updated system of records notice, “DHS/CBP-018 Customs Trade Partnership Against Terrorism System of Records” in the Federal Register at 86 Fed. Reg. 15136 (March 22, 2021), outlining that (1) DHS/CBP updated its description of how CBP collects and maintains information pertaining to prospective, ineligible, current, or former trade partners that participate in the CTPAT Program; other entities and individuals in their supply chains; and members of foreign governments’ secure supply chain programs that have been recognized by CBP, through a mutual recognition arrangement or comparable arrangement, as being compatible with the CTPAT Program; (2) DHS/CBP expanded the categories of records to include date of birth (DOB); country of birth; country of citizenship; travel document number; immigration status information; driver's license information; Trusted Traveler membership type and number; Registro Federal de Contribuyentes (RFC) Persona Fisica (for Mexican Foreign Manufacturers, Highway Carriers, and Long Haul Carriers Only); and the U.S. Social Security number beyond sole proprietors to now include the collection from all individuals listed as associated with partner companies; (3) to clarify that CTPAT members may also submit information to DHS/CBP under the CTPAT Trade Compliance program, to include importer self-assessments and other documentation; and (4) to clarify and expand several previously issued routine uses.

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

## II. Public Comments

DHS received no comments on the NPRM and one non-substantive comment on the SORN. After full consideration of the public comment, the Department will implement the rulemaking as proposed for the reasons described in the NPRM and as described here in the final rule.

### **List of Subjects in 6 CFR Part 5**

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

### **PART 5--DISCLOSURE OF RECORDS AND INFORMATION**

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 6 U.S.C. sec. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. sec. 301. Subpart A also issued under 5 U.S.C. sec. 552. Subpart B also issued under 5 U.S.C. sec. 552a.

2. Amend Appendix C to part 5, by adding paragraph “85” to read as follows:

#### **Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act**

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85. The U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP-018 CTPAT System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to, the enforcement of civil and criminal laws;

investigations, inquiries, and proceedings thereunder; and national security activities. The system of records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. sec. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. secs. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security pursuant to 5 U.S.C. sec. 552a(k)(2) has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. secs. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.
- (b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual

or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities when weighing and evaluating all available information. Further, permitting amendment to records after an investigation has been completed could impose administrative burdens on investigators. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

- (c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.
- (d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.
- (e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

- (f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.
- (g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete.
- (h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.
- (i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Lynn Parker Dupree,  
Chief Privacy Officer,  
U.S. Department of Homeland Security.